IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

LA.App..No. 1098 of 2002()

LAR.13/2000 of II ADDL.SUB COURT,THRISSUR
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APPELLANT: 2ND RESPONDENT IN LAR.13/2000:

THE SECRETARY, THRISSUR CORPORATION,
THRISSUR.

BY ADVS. SRI.K.B.MOHANDAS,SC,THRISSUR CORPORATIO
SRI.LELLULAL T.G.THUNDATHIL
SRI.K.A.SREEJITH

RESPONDENTS: CLAIMANTS & 1ST RESPONDENT IN LAR.13/2000:
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1. JOSE, S/O. KURIAKOSE,
KUTTIKKATTU VEETTIL, THRISSUR.

2. THE SPECIAL TAHSILDAR (L.A),
THRISSUR MUNICIPALITY, THRISSUR.

BY ADV. SRI.N.P.SAMUEL-R1

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 12/12/2007 ALONG WITH L.A.A. NO.1432 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN C.M.P. NO.4833 OF 2002 IN L.A.A. NO.1098 OF 2002.

DISMISSED

12.12.2007 Sd/-(KURIAN JOSEPH, JUDGE)

Sd/-(HARUN-UL-RASHID, JUDGE)

KURIAN JOSEPH & HARUN-UL-RASHID,JJ.

L.A.A. NOS.1098 OF 2002 & 1432 OF 2007

Dated this the 12th day of December, 2007

JUDGMENT

Kurian Joseph, J.

These are appeals filed by the Requisitioning Authority and the claimant respectively. Acquisition was for the purpose of widening of Pattalam road. The Land Acquisition Officer fixed land value at Rs.1,45,400/- per Are. Section 4(1) notification is dated 6.2.1996. The reference court on the basis of the undisputed importance of the acquired property and the commercial importance of the area, as referred to in paragraph 8 of the judgment, and the further finding that the land value given to the neighbouring property covered by L.A.R. 11 of 2000 can be given for the instant case, fixed land value at Rs.1,71,170/- per Are. It is brought to our notice that the land value fixed in L.A.R. 11 of 2000 has become final. In that view of the matter, there is no merit in the appeal filed by the Requisitioning Authority so far as fixation of market value is concerned.

2. As far as the case of the claimant is concerned, he mainly relied

on Ext.A1 document which pertains to a transaction whereby 19 cents of property was conveyed for an amount of Rs.80 lakhs. That transaction was prior to Section 4(1) notification. The reference court, while discussing the acceptance of the evidence tendered on the basis of Ext.A1 document and by the Advocate Commissioner who reported about the similarity of Ext.A1 with that of the acquired property, observed that the Advocate Commissioner in L.A.R. No.11 of 2000 had reported that the property covered by Ext.A1 document was not comparable with the acquired land in that case. The acquired property in L.A.R. 11 of 2000, according to the reference court, lies near to the acquired property in this case. Therefore, on the basis of the report of the Advocates Commissioner in L.A.R. 11 of 2000, the reference court declined to consider the evidence of the claimant in this case. We are afraid, the stand taken by the reference court cannot be justified. The Advocate Commissioner in L.A.R. No.11 of 2000 was not examined in this case. That report also was not before the court. There is no evidence on the part of the respondents to show that the acquired property is not similar or comparable with that of the property covered by Ext.A1 whereas the claimant has tendered evidence regarding the similarity and comparability of Ext.A1 property with the acquired property. There is also Ext.X1 commission report.

3. Learned counsel appearing for the Municipality submits that Ext.A1 property lies on the side of the Post Office road whereas the acquired property is on the Pattalam road and there is vast difference in the importance of the locality. This aspect is disputed by counsel for the claimant. Be that as it may, since there is no basis for rejecting the evidence of the claimant in this case, the claim of the appellant for enhancement of compensation has to be considered afresh.

Accordingly, we set aside the judgment and decree in L.A.R. No.13 of 2000 on the file of the II Additional Sub Court, Thrissur and remand the matter to the reference court. The parties shall appear before the reference court on 14.1.2008. It will also be open to the parties to adduce fresh evidence. The reference shall be answered within another four months. In view of the remand as above, the appellant in L.A.A. No.1432 of 2007 will be entitled to refund of the court fee.

(KURIAN JOSEPH, JUDGE)

(HARUN-UL-RASHID, JUDGE)

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KURIAN JOSEPH &
HAURN-UL-RASHID, JJ.

L.A.A.NOS.1098/02 &
1432/2007

JUDGMENT

12TH DECEMBER, 2007